

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION
FINAL UTILITY ORDERS
Selected for Publication
January 2002

January 9, 2002

WASHINGTON UTILITIES
AND TRANSPORTATION
COMMISSION

Complainant,

v.

PUGET SOUND ENERGY,
INC.

Respondent.

DOCKET NOS. UE-011570 AND UG-011571
(CONSOLIDATED)

NOTICE RE POTENTIAL EX PARTE
CONTACT

Letters to the Commission concerning an ongoing rate proceeding from persons with an interest in the result are an attempt to engage in ex parte communications with the Commission on behalf of the utility. The Commissioners will not read such letters unless they are formally admitted into evidence, subject to objection, during the rate proceeding. ¶6; WAC 480-09-140; RCW 34.05.455

January 10, 2002

WASHINGTON UTILITIES
AND TRANSPORTATION
COMMISSION

Complainant,

v.

PUGET SOUND ENERGY,
INC.

Respondent.

DOCKET NO. UE-011603

ORDER DENYING MITIGATION OF
PENALTIES

Approval sought after consummation of a transaction for which prior Commission approval is required defeats the purpose of the law and rules and does not support mitigation of penalties. ¶¶4, 7; RCW 80.12.030; RCW 80.12.020; WAC 480-143-180

January 11, 2002

BERNICE BRANNAN, ET AL.,

DOCKET NO. UT-010988 ET. AL.

Complainants,

ORDER GRANTING MOTION FOR
SUMMARY DETERMINATION

v.

QWEST CORPORATION

Respondent

The Commission finds valid the tariffs that pass through tribal utility taxes to utility customers of a utility who live within the boundaries of the Lummi or Swinomish Indian Reservations, grants the motion for summary determination and dismisses the complaints.

The Commission does not have jurisdiction to determine that a tribal utility tax is illegal, but the Commission does have jurisdiction to decide whether the rates of a utility subject to regulation are fair just, reasonable and sufficient. Thus the Commission has jurisdiction to determine whether the expenditures made by a regulated utility related to tribal taxes are prudent. ¶19-20; *RCW 80.01.040, 80.04.020, 80.28.010, 80.28.020, 80.36.080, 81.77.030*

The Commission must determine whether a utility's payment of a tax that it seeks to pass through to ratepayers is prudent. If a tax is clearly invalid, the Commission has jurisdiction to disallow a pass-through. ¶¶19-20; *WUTC v. U S WEST Communications, Inc.*, Docket No. UT-911306, First Supplemental Order

There is no presumption created by *Atkinson* that a tribal tax on transactions between nonmembers on fee land is invalid. ¶44; *Atkinson Trading Co. Inc. v. Shirley*, 532 U.S. 645, 121 S.Ct 1825, 149 L.Ed. 2d 889 (2001)

If there is a consensual relationship between the tribes and the nonmember utilities, created when they engage in commercial dealings, contracts, leases or other arrangements, tribes may regulate, through taxation, licensing or other means, the activities of such nonmember utilities. ¶¶36, 45; *Montana v. United States*, 450 U.S. 544, 101 S.Ct. 1245, 67 L.Ed. 2d 493 (1981); *Big Horn Electric Coop., Inc. v. Adams*, 219 F.3d 944 (2000)

The Lummi and Swinomish utility taxes are business and occupation taxes paid on the gross receipts of utilities doing business on the reservation, and as such they cannot be passed through to ratepayers who live outside the boundaries of the reservations. ¶¶49-51; *State ex rel. Pacific Tel. & Tel. Co. v. Department of Pub. Serv.*, 19 Wn. 2d 200, 142 P.2d 498 (1943); *King County Water Dist. V. Seattle*, 89 Wn.2d 890, 577 P.2d 567 (1978)